the land at the time of the conveyance and covenant, he and those holding under him are estopped to set up any after-acquired title against the covenantee, and such title passes to the covenantee by operation of law.[9]

No case has been found of a contingent remainderman attempting to avail himself of a covenant for title in the deed creating his interest.[10] Assuming that the contingent remainderman can take advantage of the covenant, there seems to be no reason for holding that the covenant means more than that the covenantee shall be protected in the enjoyment of his contingent remainder with all its legal attributes; there is no reason for saying that the covenant gives to the remainder an attribute of indestructibility which it does not ordinarily possess. The grantor has not covenanted that the grantees of vested estates shall not combine them so as to destroy the contingent remainder by merger. He has not covenanted for the continuance of the contingent remainder beyond its natural life.

The result reached by the court in the principal case is not wholly indefensible. There are cases in which merger does not destroy contingent remainders because to do so would render the intent of the creator wholly void.[11] Since destruction is not the invariable consequence of merger, it is understandable that the court should seek so to interpret the covenant of warranty as to estop the creator's grantees to assert that the remainder is destroyed. But, though understandable, the result seems wrong. The end is desirable, but the way to it is through legislation.

RECENT CASES

AGENCY — PRINCIPAL'S RIGHTS AGAINST AGENT — AGENT NOT LIABLE FOR NEGLIGENCE IN FORMATION OF CONTRACT WHERE CONTRACT IS ILLEGAL. — The defendant, as agent of the plaintiff, took out, in accordance with the principal's instructions, an insurance policy which was of a type declared illegal by statute. When a loss occurred, the insurance company refused to pay, on the sole ground that the defendant had not fully disclosed the risk — the insurance company expressly asserting that they would have paid but for this nondisclosure despite the illegality. The defendant is now sued for breach of duty in not disclosing the risk; his defense is that the policy itself is illegal. *Held*, that the plaintiff cannot recover. *Cheshire and Co.* v. *Vaughan Bros. and Co.*, [1920] 3 K. B. 240.

It has been held that a principal has no remedy against his agent for failure to enter into a void contract. *Cohen* v. *Kittell*, 22 Q. B. D. 680. See STORY,

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520 (1889); Beebe *v.* Swartout, 8 Ill. 162, 179–184 (1846); Levitzky *v.* Canning, 33 Cal. 299 (1867).

[9] Kimball *v.* Schoff, 40 N. H. 190 (1860); White *v.* Patten, 24 Pick. (Mass.) 324 (1837); see RAWLE, COVENANTS FOR TITLE, 5 ed., § 248. Though a grantor conveys an estate by deed with covenant of warranty, he may nevertheless disseise his grantee and acquire a valid title by adverse possession. Stearns *v.* Hendersass, 9 Cush. (Mass.) 497 (1852).

[10] The indestructibility of contingent remainders has long been felt desirable. It has been accomplished in the past by trusts to preserve contingent remainders. Smith d. Dormer *v.* Packhurst, 3 Atk. 135 (1742); see WILLIAMS, REAL PROPERTY, 22 ed., 378–9. That no report has been found of any use of the simple method of this case, argues against its validity.

[11] See note 4, *supra*.

AGENCY, 7 ed., § 222. The same principles would preclude recovery in the present case — where, instead of *failure* to enter into a contract, there was such negligence in the formation of it that the promissor had a defense aside from that of illegality. It was argued that, on the facts, clearly no question of illegality would have arisen, if the agent had not been negligent. But the same public interest, because of which a recovery is denied on the illegal contract itself, forbids a recovery here. As the contract should not have been made in the first instance, no court will inquire whether or not it would have been performed. To be sure, most courts permit a recovery by the principal of the proceeds of an illegal transaction in the hands of his agent. *Baldwin* v. *Potter*, 46 Vt. 402; *Yale Jewelry Co.* v. *Joyner*, 159 N. C. 644, 75 S. E. 993; *Tenant* v. *Elliott*, 1 B. & P. 3. The soundness of these cases is open to question. See 3 WILLISTON, CONTRACTS, § 1786. However, these cases are not to be relied upon in support of the plaintiff in the present case. In the former cases, the agent will profit to the extent of the funds in his hands, if a breach of the fiduciary relation is permitted, a consideration in no wise applicable to the principal case.

ALIENS — RIGHT OF CITIZEN OF UNITED STATES ENGAGED IN IRISH REBELLION TO BE TREATED AS AN ALIEN FRIEND. — Plaintiff, formerly an Irishman, became a naturalized American citizen. He returned to Ireland and engaged in rebellious activities against the Crown. When arrested, money found on his person was seized by the authorities. Upon release he sues for its recovery. *Held*, that the plaintiff can recover. *Pedlar* v. *Johnstone*, [1920] 2 I. R. 450.

The common law is clear that an alien friend has all the rights of a subject in respect to his personal property and that therefore such property may not be seized because of his alienage. See *Calvin's Case*, 7 Coke, 17a; *Porter* v. *Freudenberg*, [1915] 1 K. B. 857, 869. See also 1 BL. COMM. 372. But when an alien domiciled in a friendly country is engaged in rebellion against the government of the country in which he is located, he forfeits almost all of his right to the diplomatic protection of his own country. See *Dennison* v. *Mexico*, 3 Moore Arb. 2766; Proclamation of President Taylor, 3 MOORE, INT. LAW DIG. 787; Theodore S. Woolsey in (1910) PROCEEDINGS OF AM. SOC. OF INT. LAW, 99. His nation will, however, protect him from treatment contrary to civilized usage. See *Dolan* v. *Mexico*, 3 Moore Arb. 2767; *Nolan* v. *United States*, 4 Moore Arb. 3302. But as there is no such evidence of ill usage the plaintiff in the present case has forfeited his right to be treated as a citizen of the United States, and therefore cannot rely on the protection given to alien friends. The court would have been justified in refusing to recognize that he has greater rights than an alien enemy.

APPEAL AND ERROR — DETERMINATION AND DISPOSITION OF CAUSE — MOOT CASES IN EQUITY. — The plaintiff, a mine-owner, sued to enjoin the adjutant general and governor of North Dakota from carrying into effect a proclamation by the governor that coal mines should be operated by soldiers during a strike. The court below entered an order denying a temporary injunction, and the plaintiff appealed. By the time the case was heard on appeal, the mines had been returned to the plaintiff. *Held*, that no decision be made on the merits, but that the case be remanded with directions to vacate the order without prejudice to either party. *Dakota Coal Co.* v. *Fraser, Adjutant General*, 267 Fed. 130 (C. C. A.).

For a discussion of this case, see NOTES, p. 416, *supra*.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — ESTABLISHMENT OF BUILDING LINES FOR AESTHETIC PURPOSES. — A state statute empowered a